

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 419 Condominiums
SPONSOR(S): Criminal & Civil Justice Policy Council; Insurance, Business & Financial Affairs Policy Committee, Civil Justice & Courts Policy Committee, Bogdanoff and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 714

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	6 Y, 0 N, As CS	Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee	19 Y, 0 N, As CS	Reilly	Cooper
3)	Criminal & Civil Justice Policy Council	11 Y, 1 N, As CS	Bond	Havlicak
4)				
5)				

SUMMARY ANALYSIS

A 2008 law requires condominium unit owners to purchase individual unit owner coverage, requires owners to name the association as an additional insured, and gives associations the right to enforce the requirement. This bill repeals the requirement to purchase individual unit coverage, repeals the duty to name the association as an additional insured, repeals the requirement that condominium associations request from unit owners evidence of a currently effective insurance policy, and repeals the related enforcement mechanisms. The bill also clarifies that coverage under a condominium unit owner's policy is excess coverage.

Current law imposes certain requirements regarding condominium association directors. This bill provides that delinquency in any amount owed to the association disqualifies a person from running for the board of administration, provides that co-owners of multiple units in an association may serve together on the board unless they are co-occupants, and removes the requirement of the association to distribute a copy of the certification forms signed by candidates. In addition, the bill requires newly elected directors to certify in writing that they have read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies, or in lieu of the written certification to submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider.

Current law requires many older buildings to be retrofitted with sprinkler systems. All condominium associations may vote to indefinitely forego retrofitting the interior of units. The owners of a condominium building less than 75 feet in height may also vote to indefinitely forego retrofitting of the common areas, but the common areas of condominium buildings in excess of 75 feet in height must be retrofitted with sprinklers by the end of 2014. This bill extends the time for retrofitting of common areas in high-rise condominiums from 2014 to 2025.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominium Unit Owner Insurance

Prior to 2004, the statutes did not provide for a split of responsibility between the insurance coverage required of the condominium association and individual unit owner property insurance that a unit owner may purchase. Thus, agents and companies had difficulty in underwriting, and competing claims and competing denials of coverage led to litigation following storms and other damage events. In the 2004 legislative session, s. 718.111(11), F.S., was amended to include a provision splitting insurance responsibilities between associations and owners.

In the 2008 legislative session, the insurance provisions were substantially amended. Included in the 2008 changes is a requirement that a unit owner purchase hazard insurance, that the unit owner name the association as an additional insured, and that an association may purchase insurance on behalf of a unit owner who has not purchased the required insurance and may require the unit owner to reimburse the association for the cost of the insurance.

This bill amends the insurance provisions of the condominium law, s. 718.111, F.S., to:

- Repeal the requirement that a unit owner must obtain insurance coverage on the unit owner's unit.
- Repeal the requirement that the association be named as an additional insured on an individual unit owner's coverage.
- Replace the inaccurate term "hazard insurance" with the term "property insurance."
- Remove the requirement that the board of administration of the association give specific notice to all members of its intent to discuss property insurance deductibles.
- Clarify exclusions from condominium insurance policies.
- Repeal the requirement that condominium associations request from unit owners evidence of a currently effective insurance policy.

This bill also amends the insurance code, creating s. 627.714, F.S., to create a requirement that condominium owners' insurance policies include a minimum special assessment coverage of \$2,000, which special assessment coverage is for special assessments up to the association's deductible payable after an insured loss. A unit owner's policy is excess coverage over the amount recoverable under any other policy covering the same property. The date of loss to the association is the date of loss applicable to the \$2,000 coverage, not the date of the special assessment.

Condominium Association Directors

Current law provides that, if no person files to run for a particular seat against an incumbent director, that director is eligible for reappointment without an election. This bill amends s. 718.112(2)(d)1., F.S., to provide that if the total number of candidates for election to the board is equal to or is less than the number of vacancies, the incumbent candidates are reappointed without election.

Current law provides that co-owners of a condominium unit may not serve together on the association board of administration. It is unclear under current law whether co-owners who own two or more units in an association are eligible to serve together on the board of administration. This bill amends s. 718.112(2)(d)1., F.S., to provide that co-owners who own more than one condominium unit in an association are eligible to serve together on the board of administration.

Current law provides that a person who is delinquent in payment of "any fee" is ineligible for election to the board of administration, and a current director who falls more than 90 days delinquent in any fee is removed by action of law from the board. This bill amends ss. 718.112(2)(d)1. and 718.112(2)(n), F.S., to provide that delinquency in payment of any "fee, fine, or special or regular assessment" disqualifies a person from running for the board, and any director or officer with a delinquency of any fee, fine, or special or regular assessment of 90 days or more is removed from the board.

Current law requires a person running for a seat on the board of administration must certify that he or she has read the condominium law and the association's governing documents upon qualifying to run for the office. A copy of the certification of each candidate must be distributed to unit owners with the notice of the election. This bill amends s. 718.112(2)(d)3., F.S., to remove the certification requirement.

The bill requires newly elected directors, within 90 days of being elected, to certify in writing that they have read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies, or, in lieu thereof, submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate automatically disqualifies a director from serving on the board.

Condominium Fire Sprinkler Retrofitting

Section 633.0215(2), F.S., enacted in the 1998 session, is a part of the insurance laws. This section requires the State Fire Marshal to "adopt the National Fire Protection Association's Standard 1, Fire Prevention Code . . . [and] the Life Safety Code, Pamphlet 101, current editions, by reference." The original effective date of the requirement to adopt was moved back by ch. 2000-141, L.O.F., and was moved back again by ch. 2001-186, L.O.F., to January 1, 2002. One of the many requirements of those fire prevention codes and standards is a requirement that certain existing multi-family structures be retrofitted with fire sprinkler systems within 12 years of enactment. Thus, one effect of s. 633.0215, F.S., as it currently is in law, is to require some older condominium buildings to complete installation of fire sprinkler systems by January 1, 2014, unless a change is made in the standards. Multi-family structures three stories or taller constructed since 1994 have been required to have installed sprinkler systems when first built, and some local building codes have required sprinklers upon initial construction earlier and/or on shorter multi-family buildings.

Section 718.112(2)(l), F.S., provides that, notwithstanding the provisions of ch. 633, F.S., or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a condominium association or unit owner is not obligated to retrofit the common elements or units of a

residential condominium with a fire sprinkler system or other engineered life safety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests in the affected condominium.

However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building, which is defined as a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest story that can be occupied. For purposes of this exception, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event may the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

There are special voting, reporting, notice and recording requirements related to votes on retrofitting, including a requirement that a prospective purchaser or lessee of a condominium unit must be notified that the association has voted to forego retrofitting. Of the 74 associations that have reported to the DBPR that they have conducted a vote to forego retrofitting with sprinklers, the vote to forego failed only once and the remaining 73 have voted to forego retrofitting.¹

This bill extends the deadline for retrofitting the common areas of a high-rise condominium building with fire sprinklers from the end of 2014 to the end of 2025.

B. SECTION DIRECTORY:

Section 1 creates s. 627.714, F.S., regarding condominium unit owner property insurance coverage.

Section 2 amends s. 718.111, F.S., regarding condominium associations, to repeal insurance requirements.

Section 3 amends s. 718.112, F.S., regarding condominium association bylaws, to amend election procedures, to extend the time for retrofitting with sprinklers, and clarify delinquencies.

Section 4 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹ Fire system retrofitting summary reports provided to staff by DBPR, on file with staff of the Civil Justice and Courts Policy Committee.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill allows individuals to decline to purchase unit owner insurance coverage, which will lower the cost of owning a condominium unit. The savings will vary as insurance risks, rates and coverages vary substantially.

This bill allows certain older condominium associations to delay expensive sprinkler retrofitting requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2009, the Civil Justice and Courts Policy Committee adopted one amendment to the bill. The amendment:

- Changes the insurance coverage for special assessments to provide that the special assessment coverage is for an owner's share of the association's deductible payable after an insured loss.
- Provides that if an association elects to require owners to carry property insurance, the requirement must be in the declaration, articles of incorporation, or bylaws.
- Returns to current law language regarding subrogation rights (see Drafting Issues or Other Comments).
- Repeals the requirement that a candidate for the board of administration must certify that he or she has read the condominium law and the governing documents of the association.

The bill was then reported favorably with a committee substitute.

On March 10, 2009, the Insurance, Business & Financial Affairs Policy Committee adopted six amendments, which made the following changes:

- Clarifies that a condominium unit owner's policy coverage is excess coverage.

- Clarifies exclusions from condominium insurance policies.
- Repeals requirement that condominium associations request from unit owners evidence of a currently effective insurance policy.
- Establishes requirements for newly elected board members.
- Provides an effective date of July 1, 2009.
- Makes a technical change.

On March 24, 2009, the Criminal & Civil Justice Policy Council adopted three amendments to this bill. The substantive amendments:

- Specify that the newly created \$2,000 special assessment coverage only applies to the association property, only applies where the association issues a special assessment specifically related to a covered loss, and that the date of loss for the special assessment coverage is the date of the original loss, not the date of the special assessment.
- Provide that where coowners of a unit are allowed to serve together on the board of administration, they may not serve together if they are co-occupants of a unit.

The bill was then reported favorably with a council substitute.